

Shiva Delrahim Beck (SBN 228841)
GARDERE WYNNE SEWELL LLP
2021 McKinney Avenue, Suite 1600
Dallas, Texas 75201
(214) 999-3000
(214) 999-4667 (fax)
Email: sbeck@gardere.com

Attorneys for William M. Aisenberg and Jeffrey Cordes

UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re:

Ironclad Performance Wear Corporation, a
California corporation,
Debtor and Debtor in Possession.

In re:

Ironclad Performance Wear Corporation, a
Nevada corporation,
Debtor and Debtor in Possession.

- ☒ Affects both Debtors
- ☐ Affects Ironclad Performance Wear
Corporation a California corporation only
- ☐ Affects Ironclad Performance Wear
Corporation a Nevada corporation only

Lead Case No. 1:17-bk-12408-MB

Jointly administered with: 1:17-bk-
12409-MB

(Ironclad Performance Wear Corporation,
a Nevada corporation)

Chapter 11 Cases

**NOTICE OF MOTION AND MOTION
FOR RELIEF FROM THE
AUTOMATIC STAY UNDER 11
U.S.C. § 362 (with supporting
declarations)
(ACTION IN NONBANKRUPTCY
FORUM)**

Hearing Date:

November 15, 2017

Time: 10:00 a.m.

Ctrm: 303

21041 Burbank Blvd.

Woodland Hills, CA 91367

Movants: William M. Aisenberg and Jeffrey Cordes

1. Hearing Location:

- ☐ 255 East Temple Street, Los Angeles, CA 90012 ☐ 411 West Fourth Street, Santa Ana, CA 92701
☒ 21041 Burbank Boulevard, Woodland Hills, CA 91367 ☐ 1415 State Street, Santa Barbara, CA 93101
☐ 3420 Twelfth Street, Riverside, CA 92501

2. Notice is given to the Debtor and trustee (*if any*)(Responding Parties), their attorneys (*if any*), and other interested parties that on the date and time and in the courtroom stated above, Movant will request that this court enter an order granting relief from the automatic stay as to Debtor and Debtor's bankruptcy estate on the grounds set forth in the attached Motion.
3. To file a response to the motion, you may obtain an approved court form at www.cacb.uscourts.gov/forms for use in preparing your response (optional LBR form F 4001-1.RFS.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.
4. When serving a response to the motion, serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above.
5. If you fail to timely file and serve a written response to the motion, or fail to appear at the hearing, the court may deem such failure as consent to granting of the motion.
6. ☒ This motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1(d). If you wish to oppose this motion, you must file and serve a written response to this motion no later than 14 days before the hearing and appear at the hearing.
7. ☐ This motion is being heard on SHORTENED NOTICE pursuant to LBR 9075-1(b). If you wish to oppose this motion, you must file and serve a response no later than (*date*) _____ and (*time*) _____; and, you may appear at the hearing.
- a. ☐ An application for order setting hearing on shortened notice was not required (according to the calendaring procedures of the assigned judge).
- b. ☐ An application for order setting hearing on shortened notice was filed and was granted by the court and such motion and order have been or are being served upon the Debtor and upon the trustee (if any).
- c. ☐ An application for order setting hearing on shortened notice was filed and remains pending. After the court rules on that application, you will be served with another notice or an order that specifies the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion.

Date: 10/20/17

Gardere Wynne Sewell LLP

Printed name of law firm (if applicable)

Shiva Delrahim Beck

Printed name of individual Movant or attorney for Movant

/s/ Shiva Delrahim Beck

Signature of individual Movant or attorney for Movant

MOTION FOR RELIEF FROM THE AUTOMATIC STAY AS TO NONBANKRUPTCY ACTION

1. **In the Nonbankruptcy Action, Movant is:**

- a. ☒ Plaintiff
- b. ☐ Defendant
- c. ☐ Other (*specify*):

2. **The Nonbankruptcy Action:** There is a pending lawsuit or administrative proceeding (Nonbankruptcy Action) involving the Debtor or the Debtor's bankruptcy estate:

- a. *Name of Nonbankruptcy Action:* Cordes, Jeffrey, et al. vs. Ironclad Performance Wear Corps. AAA
- b. *Docket number:* Reference No. 1220057366
- c. *Nonbankruptcy forum where Nonbankruptcy Action is pending:* American Arbitration Association
- d. *Causes of action or claims for relief (Claims):* Breach of contract and related claims.

3. **Bankruptcy Case History:**

- a. ☒ A voluntary ☐ An involuntary petition under chapter ☐ 7 ☒ 11 ☐ 12 ☐ 13 was filed on (*date*) 9/8/17.
- b. ☐ An order to convert this case to chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13 was entered on (*date*) _____.
- c. ☐ A plan was confirmed on (*date*) _____.

4. **Grounds for Relief from Stay:** Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant relief from stay to proceed with the Nonbankruptcy Action to final judgment in the nonbankruptcy forum for the following reasons:

- a. ☐ Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate.
- b. ☐ Movant seeks recovery primarily from third parties and agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- c. ☐ Mandatory abstention applies under 28 U.S.C. § 1334(c)(2), and Movant agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- d. ☐ The Claims are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum.
- e. ☒ The Claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum.

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

- f. ☐ The bankruptcy case was filed in bad faith.
- (1) ☐ Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents.
- (2) ☐ The timing of the filing of the bankruptcy petition indicates that it was intended to delay or interfere with the Nonbankruptcy Action.
- (3) ☐ Multiple bankruptcy cases affect the Nonbankruptcy Action.
- (4) ☐ The Debtor filed only a few case commencement documents. No schedules or statement of financial affairs (or chapter 13 plan, if appropriate) has been filed.
- g. ☐ Other (*specify*):

5. **Grounds for Annulment of Stay.** Movant took postpetition actions against the Debtor.

- a. ☐ The actions were taken before Movant knew that the bankruptcy case had been filed, and Movant would have been entitled to relief from stay to proceed with these actions.
- b. ☐ Although Movant knew the bankruptcy case was filed, Movant previously obtained relief from stay to proceed in the Nonbankruptcy Action in prior bankruptcy cases affecting the Nonbankruptcy Action as set forth in Exhibit. _____.
- c. ☐ Other (*specify*):

6. **Evidence in Support of Motion: (*Important Note: declaration(s) in support of the Motion MUST be signed under penalty of perjury and attached to this motion.*)**

- a. ☒ The DECLARATION RE ACTION IN NONBANKRUPTCY FORUM on page 6.
- b. ☒ Supplemental declaration(s).
- c. ☐ The statements made by Debtor under penalty of perjury concerning Movant's claims as set forth in Debtor's case commencement documents. Authenticated copies of the relevant portions of the Debtor's case commencement documents are attached as Exhibit. _____.
- d. ☐ Other evidence (*specify*):

7. ☒ **An optional Memorandum of Points and Authorities is attached to this Motion.**

Movant requests the following relief:

1. Relief from the stay pursuant to 11 U.S.C. § 362(d)(1).
2. ☒ Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate.
3. ☐ The stay is annulled retroactively to the bankruptcy petition date. Any postpetition acts taken by Movant in the Nonbankruptcy Action shall not constitute a violation of the stay.

4. ☐ The co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) is terminated, modified, or annulled as to the co-debtor, on the same terms and condition as to the Debtor.
5. ☒ The 14-day stay prescribed by FRBP 4001(a)(3) is waived.
6. ☐ The order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Nonbankruptcy Action.
7. ☐ The order is binding and effective in any future bankruptcy case, no matter who the debtor may be, without further notice
8. ☐ Other relief requested.

Date: 10/20/17

Gardere Wynne Sewell LLP

Printed name of law firm (*if applicable*)

Shiva Delrahim Beck

Printed name of individual Movant or attorney for Movant

/s/ Shiva Delrahim Beck

Signature of individual Movant or attorney for Movant

DECLARATION RE ACTION IN NONBANKRUPTCY FORUM

I, (*name of Declarant*) Shiva Delrahim Beck, declare as follows:

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding (Nonbankruptcy Action) because:

- ☐ I am the Movant.
- ☒ I am Movant's attorney of record in the Nonbankruptcy Action.
- ☐ I am employed by Movant as (*title and capacity*):
- ☐ Other (*specify*):

2. I am one of the custodians of the books, records and files of Movant as to those books, records and files that pertain to the Nonbankruptcy Action. I have personally worked on books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.

3. In the Nonbankruptcy Action, Movant is:

- ☒ Plaintiff
- ☐ Defendant
- ☐ Other (*specify*):

4. The Nonbankruptcy Action is pending as:

- a. *Name of Nonbankruptcy Action*: Cordes, Jeffrey, et al. vs. Ironclad Performance Wear Corp.
- b. *Docket number*: Reference No. AAA 1220057366
- c. *Nonbankruptcy forum where Nonbankruptcy Action is pending*: American Arbitration Association

a. The Claims are:
Breach of contract and related claims.

b. True and correct copies of the documents filed in the Nonbankruptcy Action are attached as Exhibit _____.

c. The Nonbankruptcy Action was filed on (*date*) 9/7/17.

d. Trial or hearing began/is scheduled to begin on (*date*) _____.

e. The trial or hearing is estimated to require _____ days (*specify*).

f. Other plaintiffs in the Nonbankruptcy Action are (*specify*):

g. Other defendants in the Nonbankruptcy Action are (*specify*):

5. Grounds for relief from stay:

- a. ☐ Movant seeks recovery primarily from third parties and agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or the Debtor's bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- b. ☐ Mandatory abstention applies under 28 U.S.C. § 1334(c)(2), and Movant agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or the Debtor's bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- c. ☐ Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate. The insurance carrier and policy number are (*specify*):
- d. ☒ The Nonbankruptcy Action can be tried more expeditiously in the nonbankruptcy forum.
- (1) ☐ It is currently set for trial on (*date*) _____.
- (2) ☐ It is in advanced stages of discovery and Movant believes that it will be set for trial by (*date*) _____. The basis for this belief is (*specify*):
- (3) ☐ The Nonbankruptcy Action involves non-debtor parties and a single trial in the nonbankruptcy forum is the most efficient use of judicial resources.
- e. ☐ The bankruptcy case was filed in bad faith specifically to delay or interfere with the prosecution of the Nonbankruptcy Action.
- (1) ☐ Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents.
- (2) ☐ The timing of the filing of the bankruptcy petition indicates it was intended to delay or interfere with the Nonbankruptcy Action based upon the following facts (*specify*):
- (3) ☐ Multiple bankruptcy cases affecting the Property include:
- (A) Case name: Ironclad Performance Wear Corporation, a California corporation
Case number: 1:17-bk-12408-MB Chapter: 11
Date filed: _____ Date discharged: _____ Date dismissed: _____
Relief from stay regarding this Nonbankruptcy Action ☐ was ☐ was not granted.

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

(B) Case name: Ironclad Performance Wear Corporation, a Nevada corporation

Case number: 1:17-bk-12409-MB

Chapter: 11

Date filed:

Date discharged:

Date dismissed:

Relief from stay regarding this Nonbankruptcy Action ☐ was ☐ was not granted.

(C) Case name:

Case number:

Chapter:

Date filed:

Date discharged:

Date dismissed:

Relief from stay regarding this Nonbankruptcy Action ☐ was ☐ was not granted.

☐ See attached continuation page for information about other bankruptcy cases affecting the Nonbankruptcy Action.

☐ See attached continuation page for additional facts establishing that this case was filed in bad faith.

f. ☐ See attached continuation page for other facts justifying relief from stay.

6. ☐ Actions taken in the Nonbankruptcy Action after the bankruptcy petition was filed are specified in the attached supplemental declaration(s).

a. ☐ These actions were taken before Movant knew the bankruptcy petition had been filed, and Movant would have been entitled to relief from stay to proceed with these actions.

b. ☐ Movant knew the bankruptcy case had been filed, but Movant previously obtained relief from stay to proceed with the Nonbankruptcy Action enforcement actions in prior bankruptcy cases affecting the Property as set forth in Exhibit _____

c. ☐ For other facts justifying annulment, see attached continuation page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/20/17

Shiva Delrahim Beck

/s/ Shiva Delrahim Beck

Date

Printed name

Signature

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
2021 McKinney Avenue, Suite 1600, Dallas, TX 75201.

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (ACTION IN NONBANKRUPTCY FORUM)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) October 20, 2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ron Bender: rb@lnbyb.com (counsel to Debtors)
- Cathrine M Castaldi: ccastaldi@brownrudnick.com (counsel to Creditors' Committee)
- Russell Clementson: russell.clementson@usdoj.gov (counsel to United States Trustee)
- Aaron S Craig: acraig@kslaw.com, lperry@kslaw.com (Big Time Products, LLC)
- Monica Y Kim: myk@lnbrb.com, myk@ecf.inforuptcy.com (counsel to Debtors)
- Krikor J Meshefejian: kjm@lnbrb.com (counsel to Debtors)
- Tania M Moyron: tania.moyron@dentons.com, chris.omeara@dentons.com (counsel to Equity Security Holders' Committee)
- S Margaux Ross margaux.ross@usdoj.gov (counsel to United States Trustee)
- United States Trustee (SV) ustpreion16.wh.ecf@usdoj.gov (United States Trustee)
- Sharon Z. Weiss: sharon.weiss@bryancave.com, raul.morales@bryancave.com (Radians Wareham Holdings, Inc.)

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) October 23, 2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor

Ironclad Performance Wear Corporation, a
CA corporation
15260 Ventura Blvd., 20th Floor
Sherman Oaks, CA 91403

Debtor

Ironclad Performance Wear Corporation, a
Nevada corporation
15260 Ventura Blvd., 20th Floor
Sherman Oaks, CA 91403

Secured Creditor

Radians Wareham Holding, Inc.
Attn: Mike Tutor, CEO
5305 Distriplex Farms
Memphis, TN 38141

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

Counsel to Radians Wareham Holdings

E. Franklin Childress, Jr.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
165 Madison Ave, Suite 2000
Memphis, Tennessee 38103

Sharon Z. Weiss
Bryan Cave
120 Broadway, Suite 300
Santa Monica, CA 90401

Government Entities

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

U.S. Securities & Exchange
Commission
Attn: Bankruptcy Counsel
444 South Flower St., Suite 900
Los Angeles, CA 90071-9591

Employment Development Dept.
Bankruptcy Group MIC 92E
PO Box 826880
Sacramento, CA 94280-00001

Franchise Tax Board Bankruptcy
Section, MS: A-340
PO Box 2952
Sacramento, CA 95812-2952
United States Trustee
915 Wilshire Blvd., Suite 1850
Los Angeles, CA 90017

State Board of Equalization
Account Information Group, MIC: 29
PO Box 942879
Sacramento, CA 94279-0029
United States Attorney's Office
Federal Building, Room 7516
300 North Los Angeles Street
Los Angeles, CA 90012

Los Angeles County Tax Collector
PO Box 54110
Los Angeles, CA 90054-0110

United States Department of
Justice
Ben Franklin Station
P.O. Box 683
Washington, DC 20044

Top 20 Unsecured Creditors, on the attached list.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) October 23, 2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Judge's Copy – VIA OVERNIGHT

Hon. Martin R. Barash
United States Bankruptcy Court
21041 Burbank Boulevard, Suite 342
Woodland Hills, CA 91367

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/20/17
Date

Shiva Delrahim Beck
Printed Name

/s/ Shiva Delrahim Beck
Signature

Top 20 Unsecured Creditors:

Advantage Media Services, Inc. Attn:
Steven Helmle
29010 Commerce Center Drive
Valencia, CA 91355

Gerard
BDO USA, LLP
P. O. BOX 677973
Dallas, TX 75267-7973

Daniel Gomes
Capital One Bank
P. O. BOX 1917
Merrifield, VA 22116-1917

Carol Pearson
FedEx
PO Box 7221
Pasadena, CA 91109-7321

Ms. Vicz Yue
Ka Hung Glove Industrial Co. Ltd. Fujian
Quanzhou Jiacheng Leather Chi Feng
Road, Quanzhou City
Fujian, 362000, China

Sky Lin
Marusan - Mimasu Tshusho Co. Ltd.
No 1 Queen' Road Central
Hong Kong China

Janice Lee
Woneel Midas Leathers
Jl Gembor Raya Desa Pasirjaya
Tangerang
Banten, Indonesia, 15135

Danny Negara
Mercindo Global Manufaktur
Jl. Raya Semarang-Bawen Km.29
SEemerang,
Central Java 50661, Indonesia

Kwong
PT JJ GLOVES INDO
JL Ronggowarsito, Mlese, Ceper
Bonded Zone, Klaten
Central Java, Indonesia, 57463

Brent Waters
Resources Global Professionals
P.O. Box 740909
Los Angeles, CA 90074-0909

Risk Consulting Partners
24722 Network Place
Chicago, IL 60673-1247

Shur-Sales & Marketing, Inc. 3830
S Windermere St.
Englewood, CO 80110

Carla Durand
University of Milwaukee
P O Box 500
Milwaukee, WI 53201

Liliana Dominguez
Yellow and Roadway
P. O. Box 100129
Pasadena, CA 91355

Eliza Yang
Nantong Changbang Gloves Co.
Flat/RM 1602 Chit Lee Comm
Bldg 30-36, Shau Kei Wan Road
Hong Kong, China

Mark Robba
PT SPORT GLOVE INDONESIA
Krandon Desa Pandowoharjo
Sleman
Yogyakarta, Indonesia, 55512

Skadden Arps Slate Meagher & Flom
LLP
P O Box 1764
White Plains, NY 10602

Robert Tejeda
Stubbs, Alderton & Markiles, LLP
15260 Ventura Blvd
20th Floor
Sherman Oaks, CA 91403

John Calhoun
Synetra
1110 E. State Highway 114, Suite 200
Southlake, TX 76092

Bradley J. S. Weiss
Winspeed Sports Shanghai Co., Ltd.
858 Mingzhu Road
Shanghai China, 00020-1702

Inwood National Bank
P O Box 857413
Richardson, TX 75085